

1 Robert Stempler (CA Bar No. 160299)

2 Robert@stopcollectionharassment.com

3 CONSUMER LAW OFFICE OF ROBERT STEMPLER APLC

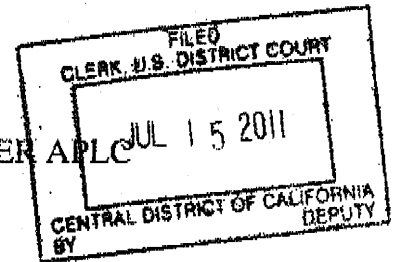
4 555 S. Sunrise Way, Suite 200

5 Palm Springs, CA 92264

6 (760) 422-2200

7 (760) 479-5957 *facsimile*

8 Counsel for Plaintiff Mathew Donaca



9
10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA

12 MATTHEW DONACA, individually
13 and on behalf of all others similarly
14 situated,

LACV 11-5859 PSG (CWY)
Case No.

15 Plaintiff,

COMPLAINT FOR DAMAGES,
16 INJUNCTIVE AND
17 DECLARATORY RELIEF
CLASS ACTION

18 vs.

19 DISH NETWORK, L.L.C.,

(Violation of the Telephone
Consumer Protection Act)

20 Defendant.

21 BY FAX

22
23 1. This court has original jurisdiction under 28 U.S.C.

24 § 1332(d)(2)(a) (2010), because the matter in controversy is believed
25 to exceed the sum or value of \$5,000,000 for the class, exclusive of
26 interests and costs, and is a class action in which a member of the
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1 Plaintiff class is a citizen of a state different from the Defendant. The
2 district court also has federal question jurisdiction over these claims
3 under 28 U.S.C. § 1331 (2010).
4

5 **I. Preliminary Statement**

6 2. Twenty years ago, Congress recognized that unsolicited
7 telemarketing calls are a common nuisance and an unreasonable
8 intrusion on citizens' privacy, and enacted the Telephone Consumer
9 Protection Act of 1991, or TCPA, to regulate telemarketing. Among
10 other things, the TCPA prohibits telemarketing calls to persons and
11 entities who list their telephone numbers on the national Do Not Call
12 Registry, prohibits telemarketers from placing unsolicited pre-
13 recorded phone messages, and prohibits all pre-recorded calls to
14 cellular phones without express written consent.
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18 3. The TCPA places responsibility for violations not only on
19 businesses that *place* unlawful calls, but also on businesses *on whose*
20 *behalf* the calls are made.
21

22 4. Here, Defendant Dish Network, L.L.C., through its
23 authorized retailers acting on its behalf, made more than a dozen
24 unlawful telemarketing calls to Plaintiff Matthew Donaca, and made
25 scores of similar calls to consumers nationwide. Defendant Dish has
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1 profited from these unlawful calls, and is liable for them under the
2 TCPA. Mr. Donaca brings this action individually and on behalf of a
3 class to enforce federal law and recover statutory damages for the
4 Defendant's violations.
5

6 **II. Parties**

7 5. Plaintiff Matthew Donaca resides in Venice, California.
8

9 6. Defendant Dish Network, L.L.C. is a Colorado limited
10 liability company organized for profit, which has its principal place of
11 business at 9601 S. Meridian Blvd., Englewood, Colorado 80122.
12

13 **III. The Legal Basis for the Complaint**

14 ***The TCPA regulates the telemarketing*** 15 ***at issue in this case*** 16

17 7. In 1991, Congress enacted the TCPA to regulate the
18 explosive growth of the telemarketing industry. In so doing,
19 Congress recognized that "[u]nrestricted telemarketing . . . can be an
20 intrusive invasion of privacy[.]" Telephone Consumer Protection Act
21 of 1991, Pub. L. No. 102-243, § 2(5) (1991) (codified at 47 U.S.C. §
22 227).
23
24

25 8. In 1995, under its authority to adopt rules prohibiting
26 abusive and deceptive telemarketing acts or practices pursuant to the
27
28

1 telemarketing act, 15 U.S.C. §§ 6101-6108 (2010), the FTC adopted
2 the telemarketing sales rule, 16 C.F.R. § 310 (2010), which was later
3 amended in 2003. Among other things, the amended TSR
4 established a “Do Not Call Registry.” The Registry lists the telephone
5 numbers of consumers who have informed the FTC that they do not
6 wish to receive certain types of telemarketing calls.
7

8
9 9. The TCPA prohibits persons or entities from initiating
10 telephone solicitations to registered telephone subscribers. 47 U.S.C.
11 § 227(c) (2010); 47 C.F.R. § 64.1200(c) (2010). A person whose
12 number is on the Registry, and who has received more than one
13 telephone call within any twelve-month period by or on behalf of the
14 same entity in violation of the TCPA, can sue the violator and seek
15 statutory damages. 47 U.S.C. § 227(c)(5) (2010).
16
17

18 10. The TCPA further prohibits the use of an unsolicited pre-
19 recorded phone message to residential homes to advertise the sale of
20 goods and services. 47 U.S.C. § 227(b)(1)(b) (2010); 47 C.F.R. §
21 64.1200 (2010).
22

23 11. It is also a violation of the TCPA to call a person’s cellular
24 telephone using an automatic telephone dialing system or
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1 prerecorded or artificial voice message. 47 U.S.C. § 227(b)(1)(a)(iii)
2 (2010).

3 12. Federal regulations also require that companies making
4 telemarketing calls provide or volunteer a phone number or address
5 for their company at any point during the call. Failure to do so is a
6 violation of 47 C.F.R. § 64.1200(d)(4) (2010).
7
8
9

10 ***TCPA “on behalf of” liability***

11 13. Under the TCPA, a person or entity can be liable for calls
12 made on its behalf, even if the person or entity does not directly place
13 the calls. 47 U.S.C. § 227 (c)(5) (2010).
14

15 14. As explained by the FCC, the agency charged with
16 interpreting and enforcing the TCPA, the applicable rules “generally
17 establish that the party on whose behalf a solicitation is made bears
18 ultimate responsibility for any violations.” See 10 FCC Rcd. 12391,
19 12397 ¶ 13 (1995).
20
21

22 15. The FCC reiterated this principle in 2005, when it stated
23 that “a company on whose behalf a telephone solicitation is made
24 bears the responsibility for any violation of our telemarketing rules
25 and calls placed by a third party on behalf of that company are
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1 treated as if the company itself placed the call.” See 20 FCC Rcd.
2 13664, 13667 ¶ 7 (2005).

3 **IV. The Factual Basis for the Complaint**

4 ***Dish markets through its retailers, and profits*** 5 ***from its retailers’ illegal telemarketing***

6
7 16. Dish sells Dish network satellite television programming
8 to consumers throughout the United States.

9 17. Dish markets its programming to consumers through a
10 network of retailers.

11
12 18. Dish relies on its retailers, in large part, to generate new
13 customers for Dish.

14
15 19. Dish delegates to retailers the responsibility to advertise
16 Dish services through a variety of marketing methods, including
17 telemarketing.

18
19 20. Dish allows its retailers to market on behalf of and to use
20 the Dish trade name and logo in conducting telemarketing on behalf
21 of Dish.

22
23 21. Dish’s retailers hold themselves out to the public as
24 engaged in telemarketing on behalf of Dish.

25 22. Dish, however, maintains sole discretion to set the price
26 for programming offered to consumers, to determine the type of
27
28

1 programming offered to consumers, and to determine which
2 proposed orders solicited by retailers will be accepted.

3 23. Dish compensates its retailers whose marketing efforts
4 generate new customers that are ultimately accepted and approved by
5 Dish.
6

7 24. Dish maintains the right to terminate or discipline its
8 retailers.
9

10 25. Dish is engaged in a partnership with its retailers.

11 26. Dish is engaged in a contractual association with its
12 retailers, to carry out a single business enterprise for profit.
13

14 27. To carry out this partnership and joint venture, Dish and
15 its retailers combined their property, money, effects, skill and
16 knowledge.
17

18 28. In the course of its partnership or joint venture, Dish
19 delegated authority to market its products to its retailers.
20

21 ***Dish Network and its retailers have***
22 ***been fined and charged with illegal telemarketing***

23 29. For many years, consumers complained directly to Dish,
24 and to the Federal Trade Commission, that Dish retailers were
25 engaging in telemarketing in violation of the TCPA.
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1 30. In July of 2009, Dish entered into an “assurance of
2 voluntary compliance” with the attorneys general of 48 states (the
3 “AG settlement agreement”).

4
5 31. The AG settlement agreement included allegations of
6 unlawful telemarketing being conducted on Dish’s behalf.

7 32. As stated in the AG settlement agreement, Dish controls
8 the conduct, practices and procedures of its retailers:
9

- 10 • through its Dish Network Retailer Agreement;
- 11 • through “Business Rules” that are established by Dish
12 Network and must be followed by retailers;
- 13 • through training that Dish Network provides to its
14 retailers;
- 15 • by requiring retailers to take all actions and refrain from
16 taking any action as reasonably requested by Dish
17 Network in connection with marketing, advertising,
18 promotion and/or solicitation or orders;
- 19 • by requiring retailers to market, promote and describe
20 Dish products and services in a manner approved by
21 Dish;
- 22 • by setting all processes for its programming and related
23 promotions and limiting its retailers’ ability to offer and
24 sell other goods and services to Dish customers; and
- 25 • by requiring retailers to use Dish’s trademarks, logos and
26 service marks in connection with the retail sale of Dish
27 services and otherwise controlling their appearance and
28 conduct when interacting with consumers.

1 33. Also in 2009, the Federal Trade Commission and the
2 States of California, Illinois, Ohio and North Carolina filed suit
3 against Dish for telemarketing to consumers whose phone numbers
4 were listed on the Do Not Call Registry, and for telemarketing via pre-
5 recorded message. *See United States v. Dish Network, LLC*, 667 F.
6 Supp. 2d. 952 (C.D. Ill. 2009) (denying Dish's motion to dismiss and
7 holding that Dish may be liable under the TCPA for the actions of its
8 telemarketers).
9

11 34. Dish knew or should have known that its retailers were
12 engaging in telemarketing via auto-dialer and/or pre-recorded
13 message to residential homes and cell phones.
14

15 35. Dish knew or should have known that its retailers were
16 engaged in repeated telemarketing to consumers whose phone
17 numbers were listed on the Do Not Call Registry.
18

19 36. Even after Dish became aware that its retailers were
20 engaged in telemarketing via auto-dialer or pre-recorded message, it
21 failed to take sufficient action to end such conduct.
22

23 37. By failing to act after having knowledge of such conduct,
24 Dish ratified illegal telemarketing conducted on its behalf by its
25 retailers.
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Dish Network and its retailers made numerous unlawful calls to the Plaintiff

38. On January 13, 2006, Mr. Donaca received, at his residence, a pre-recorded telemarketing call on behalf of Dish (the “First Call”), that was made by a Dish retailer called Dish One Satellite, with a principal place of business in American Fork, Utah.

39. On January 13, 2006, Mr. Donaca received, at his residence, a pre-recorded telemarketing call on behalf of Dish (the “Second Call”) from a Dish retailer called American Satellite, with a principal place of business in San Diego, California.

40. On January 24, 2006, Mr. Donaca listed his residential phone number ((xxx) xxx-1707) on the Do Not Call Registry.

41. On October 5, 2006, Mr. Donaca received, at his residence, a live telemarketing call on behalf of Dish (the “Third Call”) from a Dish representative named Rozz Tylor who stated she was calling from the Dish sales office in Glendale, California.

42. On November 6, 2006, Mr. Donaca wrote to Dish, informed it of the illegal telemarketing calls at issue, and requested that his residential phone number be added to Dish’s internal Do Not Call Registry.

1 43. On June 4, 2007, Mr. Donaca received, at his residence, a
2 pre-recorded telemarketing call on behalf of Dish (the "Fourth Call").
3 Mr. Donaca was then transferred to a Dish representative named
4 "Dave," who quickly hung up on Mr. Donaca.
5

6 44. On August 5, 2007, Mr. Donaca received, at his residence,
7 a pre-recorded telemarketing call on behalf of Dish (the "Fifth Call").
8 The fifth call was made by a Dish retailer named Satellite Prospector
9 Corporation in Monterey Park, California.
10

11 45. On August 6, 2007, Mr. Donaca received, at his residence,
12 a live telemarketing call on behalf of Dish (the "Sixth Call"). The sixth
13 call was made by Satellite Prospector Corporation.
14

15 46. During the sixth call, Mr. Donaca made a "do not call"
16 request to a Dish retailer manager, named Anna Lo.
17

18 47. On October 25, 2007, Mr. Donaca received, at his
19 residence, a pre-recorded telemarketing call on behalf of Dish (the
20 "Seventh Call"). The seventh call was made by a Dish retailer named
21 Apex Satellite, Inc. in Irvine, California.
22

23 48. On November 16, 2007, Mr. Donaca received, at his
24 residence, a pre-recorded telemarketing call on behalf of Dish (the
25 "Eighth Call"). The eighth call was made by Apex Satellite, Inc.
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1 49. On July 30, 2008, Mr. Donaca received, at his residence,
2 a pre-recorded telemarketing call on behalf of Dish (the “Ninth Call”).
3 The ninth call was transferred to a representative named Ian who
4 stated several times that he was calling from Dish, but then
5 terminated the ninth call without making further disclosure.
6

7 50. On July 31, 2008, Mr. Donaca received, at his residence, a
8 pre-recorded telemarketing call on behalf of Dish (the “Tenth Call”).
9 The tenth call was transferred to Dish retailer Satellite Sales in
10 Portland, Oregon. Mr. Donaca spoke with a manager by the name of
11 Michael Heen who admitted that Satellite Sales was a Dish retailer.
12 Mr. Donaca, again, made a “do not call” request.
13

14 51. On August 8, 2008, Mr. Donaca received, at his
15 residence, a pre-recorded telemarketing call on behalf of Dish (the
16 “Eleventh Call”). The caller ID for the Eleventh Call was (310) 599-
17 5750. The eleventh call was transferred to a representative named
18 Blaire who hung up on Mr. Donaca without making further
19 disclosure.
20

21 52. On August 10, 2008, Mr. Donaca received, at his
22 residence, a pre-recorded telemarketing call on behalf of Dish (the
23 “Twelfth Call”). The caller ID for the Twelfth Call was (978) 570-
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1 2310. The Twelfth Call was transferred to a representative named
2 Melissa with a Dish retailer named Clear Interactive, LLC, in Aliso
3 Viejo, California. During the Twelfth Call, Mr. Donaca, again, made a
4 “do not call” request and, again, instructed that such request be
5 forwarded to Dish.
6

7 53. On September 3, 2008, Mr. Donaca received, at his
8 residence, a pre-recorded telemarketing call on behalf of Dish (the
9 “Thirteenth Call”). The caller ID for the Thirteenth Call was (978)
10 570-2310. The Thirteenth Call was transferred to a representative
11 named Tyrone Brown with Clear Interactive, LLC. When Mr. Donaca
12 inquired as to the name of the retailer making the Thirteenth Call,
13 Mr. Brown became abusive.
14
15

16 54. On March 20, 2009, Mr. Donaca received, at his
17 residence, a live telemarketing call on behalf of Dish (the “Fourteenth
18 Call”). The caller ID for the Fourteenth call was (315) 633-4313. The
19 Fourteenth call was transferred to a retailer named Gemini
20 Wireless/Satellite Services whose representative informed Mr.
21 Donaca that it was a Dish retailer, with a contact number at (877)
22 268-9067. The (877) phone number provided to Mr. Donaca links to
23 a retailer named Dish Promotions, of Jacksonville, Florida.
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1 55. On March 24, 2009, Mr. Donaca received, at his
2 residence, a live telemarketing call (the “Fifteenth call”) from caller
3 ID (315) 633-4313. This caller ID was identical to the caller ID for the
4 Fourteenth call which was tracked to Gemini Wireless/Satellite
5 Services.
6

7 56. On March 25, 2009, Mr. Donaca received, at his
8 residence, a live telemarketing call (the “Sixteenth call”) from caller
9 ID (315) 633-4313. This caller ID was identical to the caller ID for the
10 Fourteenth and Fifteenth calls that were tracked to Dish. In an effort
11 to identify the source of the Sixteenth call, Mr. Donaca dialed (315)
12 633-4313 and the message that answered the phone self-identified it
13 as “Satellite Services,” and further disclosed that Satellite Services is a
14 retailer for Dish network.
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18 57. Mr. Donaca did not give Dish or any Dish retailer prior
19 express consent to contact him at any time.
20

21 58. At no time did Mr. Donaca have an established business
22 relationship with Dish or any Dish retailer.
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V. Class Action Allegations

59. Plaintiff brings this action under Rule 23 of the Federal Rules of Civil Procedure on behalf of a class of all other persons or entities similarly situated throughout the United States.

60. Upon information and belief, over the past four years, Dish and/or its retailers or authorized agents, have engaged in widespread advertising via unsolicited prerecorded telemarketing calls and auto-dialer use in violation of the TCPA.

61. Upon information and belief, over the past four years, Dish and/or its retailers or authorized agents, have engaged in widespread advertising via unsolicited prerecorded telemarketing calls and auto-dialer use, to cell phones, in violation of the TCPA.

62. Upon information and belief, over the past four years, Dish and/or its retailers or authorized agents, have engaged in widespread and repeated telemarketing to consumers whose residential phone numbers are listed on the Do Not Call Registry, in violation of the TCPA.

63. Upon information and belief, over the past several years, Dish and/or its retailers or authorized agents, have transmitted illegal

1 calls to hundreds of thousands, if not millions, of consumers
2 throughout the United States.

3 64. Upon information and belief, neither Dish nor its retailers
4 or authorized agents obtained the consent of recipients prior to the
5 transmission of telemarketing calls.
6

7 65. Upon information and belief, neither Dish nor its retailers
8 obtained written consent to transmit telemarketing calls to
9 consumers whose residential phone numbers were registered on the
10 Do Not Call Registry.
11

12 66. The class of persons Plaintiff proposes to represent is
13 defined as all persons or entities within the United States who Dish
14 either directly, or through its retailers or authorized agents, sent, or
15 caused to be sent, unsolicited telemarketing calls promoting Dish's
16 goods or services, at any time within the four years prior to the filing
17 of the instant complaint.
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20 67. The class as defined above is identifiable by phone
21 records and phone number databases used by Dish or its agents in
22 transmitting its unsolicited prerecorded telemarketing calls.
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1 68. On information and belief, the potential class members
2 number in the hundreds of thousands and constitutes a class so
3 numerous that joinder of all class members is impracticable.
4

5 69. Plaintiff is a member of the class.

6 70. There are questions of law and fact common to Plaintiff
7 and to the proposed class, including but not limited to the following:
8

9 a. Whether Dish violated the TCPA by engaging in
10 advertising by unsolicited prerecorded telemarketing calls.

11 b. Whether Dish violated the TCPA by engaging in
12 advertising by unsolicited prerecorded telemarketing calls to
13 consumers' cell phones.
14

15 c. Whether Dish violated the TCPA by making
16 repeated telemarketing calls to residential phone numbers listed on
17 the Do Not Call Registry.
18

19 d. Whether the telemarketing calls at issue were
20 initiated by Dish or were made on behalf of Dish as those terms have
21 been interpreted by the TCPA and the FCC.
22

23 e. Whether the Plaintiff and the members of the class
24 are entitled to statutory damages as a result of Dish's actions.
25

26 71. Plaintiff's claims are typical of the claims of the class.
27
28

1 72. Plaintiff is an adequate representative of the class because
2 his interests do not conflict with the interests of the class, he will
3 fairly and adequately protect the interests of the class, and he is
4 represented by counsel skilled and experienced in class actions,
5 including TCPA class actions.
6

7 73. The actions of Dish are generally applicable to the class as
8 a whole and to the Plaintiff and the class.
9

10 74. Common questions of law and fact predominate over
11 questions affecting only individual members of the class and a class
12 action is the superior method for fair and efficient adjudication of the
13 controversy. The only individual question concerns identification of
14 class members, which will be ascertainable from records maintained
15 by Dish and/or its agents.
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18 75. The likelihood that individual members of the class will
19 prosecute separate actions is remote due to the time and expense
20 necessary to conduct such litigation, and because class members are
21 unlikely to know that their rights have been violated.
22

23 76. Mr. Donaca is capable of representing and is willing to
24 represent the other members of the class.
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VI. Legal Claims

Count One:

**Telemarketing in violation of the TCPA through
pre-recorded telemarketing calls**

77. Plaintiff incorporates the allegations from all previous paragraphs as if fully set forth herein.

78. Dish, either directly or through its retailers and authorized agents, negligently and/or knowingly caused pre-recorded telemarketing solicitations to be sent to Plaintiff's home, and to the homes or cell-phones of other members of the class, in violation of the TCPA and FCC regulations.

Count Two:

**Telemarketing in violation of the TCPA through calls
to persons and entities on the Do Not Call Registry**

79. Plaintiff incorporates the allegations from all previous paragraphs as if fully set forth herein.

80. Dish, either directly or through its retailers or authorized agents, negligently and/or knowingly caused multiple telemarketing solicitations to be sent to Plaintiff's home, and to the homes or cell-phones of other members of the class, whose residential or cell-phone

1 numbers were listed on the Do Not Call Registry, in violation of the
2 TCPA and FCC regulations.

3 **Count Three:**

4 **Injunctive relief to bar future TCPA violations**

5
6 81. Plaintiff incorporates the allegations from all previous
7 paragraphs as if fully set forth herein.

8
9 82. The TCPA expressly authorizes injunctive relief to prevent
10 further violations of its provisions.

11 83. The Plaintiff respectfully requests that this Court order
12 the Defendant, its employees, retailers, agents and independent
13 distributors, to immediately cease engaging in telemarketing in
14 violation of the TCPA.
15

16 **Count Four:**

17 **Injunctive relief to preserve evidence**

18
19 84. Plaintiff incorporates the allegations from all previous
20 paragraphs as if fully set forth herein.

21
22 85. Dish or its agents have custody and control of the
23 business records and other information necessary to identify the
24 members of the class, including names and telephone numbers.
25 Unless immediate injunctive relief is ordered, it is feared that the
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1 Defendant or its agents will alter, erase, delete, destroy or otherwise
2 dispose of the records in their possession that are necessary to
3 identify recipients of the pre-recorded messages sent by Dish or on
4 behalf of Dish.
5

6 86. For this reason, the Plaintiff respectfully requests the
7 court enter an order enjoining Dish and its agents, or anyone acting
8 on their behalf, from altering, deleting or destroying any documents
9 or records that could be used to identify the members of the class.
10

11 **VII. Relief Sought**

12 On behalf of himself and all class members, Plaintiff requests
13 the following relief:
14

- 15 1. That the Court grant class certification as proposed above;
- 16 2. For negligent violations of the TCPA, a \$500 penalty
17 awarded to the Plaintiff and each class member for each
18 telemarketing call made by or on behalf of the Defendant;
19
20 3. For knowing violations of the TCPA, a \$1500 penalty
21 awarded to the Plaintiff and each class member for each
22 telemarketing call made by or on behalf of the Defendant;
23
24 4. That the Court award the injunctive relief requested
25 above; and
26
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1 5. That the Plaintiff and class members be granted such
2 other and further relief as is just and equitable under the
3 circumstances.
4

5 **Jury trial demanded.**

6 
7

8 _____
9 Robert Stempler
Counsel for Matthew Donaca
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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge Philip S. Gutierrez and the assigned discovery Magistrate Judge is Carla Woehrle.

The case number on all documents filed with the Court should read as follows:

CV11- 5859 PSG (CWx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

☒ **Western Division**
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

☐ **Southern Division**
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

☐ **Eastern Division**
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

Robert Stempler, Cal. Bar No. 160299
 Email: Robert@StopTheCase.com
 Consumer Law Office of Robert Stempler, APLC
 P.O. Box 1721
 Palm Springs, CA 92263-1721
 Telephone (760) 422-2200; Fax: (760) 479-5957

UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA

MATTHEW DONACA, individually and on behalf of
 all others similarly situated,

PLAINTIFF(S)

v.

DISH NETWORK, L.L.C.,

DEFENDANT(S).

CASE NUMBER

LACV11-5859 PSG/cw

SUMMONS

TO: DEFENDANT(S): DISH NETWORK, L.L.C.

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached ☒ complaint ☐ amended complaint ☐ counterclaim ☐ cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Robert Stempler, whose address is P.O. Box 1721; Palm Springs CA 92263-1721. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Clerk, U.S. District Court

Dated: JUL 15 2011

By: SUSANA P. BUSAMANTE
 Deputy Clerk

(Seal of the Court)

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

I (a) PLAINTIFFS (Check box if you are representing yourself ☐)
MATTHEW DONACA, individually and on behalf of all others similarly
situated,

DEFENDANTS
DISH NETWORK, L.L.C.

(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing
yourself, provide same.)

Robert Stempler, Telephone (760) 422-2200
Consumer Law Office of Robert Stempler, APLC
P.O. Box 1721, Palm Springs CA 92263-1721

Attorneys (If Known)

BY FAX

II. BASIS OF JURISDICTION (Place an X in one box only.)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S.
Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship
of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only
(Place an X in one box for plaintiff and one for defendant.)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|--|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place
of Business in this State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place
of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. ORIGIN (Place an X in one box only.)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify): ☐ 6 Multi-District Litigation ☐ 7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: JURY DEMAND: ☒ Yes ☐ No (Check "Yes" only if demanded in complaint.)

CLASS ACTION under F.R.C.P. 23: ☒ Yes ☐ No

MONEY DEMANDED IN COMPLAINT: \$ To be determined.

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

Telephone Consumer Protection Act, 15 U.S.C. §§ 6101-6108

VII. NATURE OF SUIT (Place an X in one box only.)

- | | | | | | |
|--|--|---|--|--|---|
| <input type="checkbox"/> 400 State Reapportionment | <input type="checkbox"/> 110 Insurance | <input type="checkbox"/> 310 Airplane | <input type="checkbox"/> 370 Other Fraud | <input type="checkbox"/> 510 Motions to Vacate Sentence | <input type="checkbox"/> 710 Fair Labor Standards Act |
| <input type="checkbox"/> 410 Antitrust | <input type="checkbox"/> 120 Marine | <input type="checkbox"/> 315 Airplane Product Liability | <input type="checkbox"/> 371 Truth in Lending | <input type="checkbox"/> 530 Habeas Corpus General | <input type="checkbox"/> 720 Labor/Mgmt. Relations |
| <input type="checkbox"/> 430 Banks and Banking | <input type="checkbox"/> 130 Miller Act | <input type="checkbox"/> 320 Assault, Libel & Slander | <input type="checkbox"/> 380 Other Personal Property Damage | <input type="checkbox"/> 535 Death Penalty | <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act |
| <input type="checkbox"/> 450 Commerce/ICC Rates/etc. | <input type="checkbox"/> 140 Negotiable Instrument | <input type="checkbox"/> 330 Fed. Employers' Liability | <input type="checkbox"/> 385 Property Damage Product Liability | <input type="checkbox"/> 540 Mandamus/Other | <input type="checkbox"/> 740 Railway Labor Act |
| <input type="checkbox"/> 460 Deportation | <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment | <input type="checkbox"/> 340 Marine | <input type="checkbox"/> 422 Appeal 28 USC 158 | <input type="checkbox"/> 550 Civil Rights | <input type="checkbox"/> 790 Other Labor Litigation |
| <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations | <input type="checkbox"/> 151 Medicare Act | <input type="checkbox"/> 345 Marine Product Liability | <input type="checkbox"/> 423 Withdrawal 28 USC 157 | <input type="checkbox"/> 555 Prison Condition | <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act |
| <input type="checkbox"/> 480 Consumer Credit | <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) | <input type="checkbox"/> 350 Motor Vehicle | <input type="checkbox"/> 441 Voting | <input type="checkbox"/> 610 Agriculture | <input type="checkbox"/> 820 Copyrights |
| <input type="checkbox"/> 490 Cable/Sat TV | <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits | <input type="checkbox"/> 355 Motor Vehicle Product Liability | <input type="checkbox"/> 442 Employment | <input type="checkbox"/> 620 Other Food & Drug | <input type="checkbox"/> 830 Patent |
| <input type="checkbox"/> 810 Selective Service | <input type="checkbox"/> 160 Stockholders' Suits | <input type="checkbox"/> 360 Other Personal Injury | <input type="checkbox"/> 443 Housing/Accommodations | <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 | <input type="checkbox"/> 840 Trademark |
| <input type="checkbox"/> 850 Securities/Commodities/Exchange | <input type="checkbox"/> 190 Other Contract | <input type="checkbox"/> 362 Personal Injury-Med Malpractice | <input type="checkbox"/> 444 Welfare | <input type="checkbox"/> 630 Liquor Laws | <input type="checkbox"/> 861 HIA (1395ff) |
| <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 | <input type="checkbox"/> 195 Contract Product Liability | <input type="checkbox"/> 365 Personal Injury-Product Liability | <input type="checkbox"/> 445 American with Disabilities - Employment | <input type="checkbox"/> 640 R.R. & Truck | <input type="checkbox"/> 862 Black Lung (923) |
| <input checked="" type="checkbox"/> 890 Other Statutory Actions | <input type="checkbox"/> 196 Franchise | <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability | <input type="checkbox"/> 446 American with Disabilities - Other | <input type="checkbox"/> 650 Airline Regs | <input type="checkbox"/> 863 DTWC/DFWW (405(g)) |
| <input type="checkbox"/> 891 Agricultural Act | <input type="checkbox"/> 210 Land Condemnation | <input type="checkbox"/> 462 Naturalization Application | <input type="checkbox"/> 440 Other Civil Rights | <input type="checkbox"/> 660 Occupational Safety/Health | <input type="checkbox"/> 864 SSID Title XVI (405(g)) |
| <input type="checkbox"/> 892 Economic Stabilization Act | <input type="checkbox"/> 220 Foreclosure | <input type="checkbox"/> 463 Habeas Corpus-Alien Detainee | | <input type="checkbox"/> 690 Other | <input type="checkbox"/> 865 RSI (405(g)) |
| <input type="checkbox"/> 893 Environmental Matters | <input type="checkbox"/> 230 Rent Lease & Ejectment | <input type="checkbox"/> 465 Other Immigration Actions | | | <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) |
| <input type="checkbox"/> 894 Energy Allocation Act | <input type="checkbox"/> 240 Tort to Land | | | | <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609 |
| <input type="checkbox"/> 895 Freedom of Info. Act | <input type="checkbox"/> 245 Tort Product Liability | | | | |
| <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice | <input type="checkbox"/> 290 All Other Real Property | | | | |
| <input type="checkbox"/> 950 Constitutionality of State Statutes | | | | | |

LACV11-5859

FOR OFFICE USE ONLY: Case Number: _____

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? ☒ No ☐ Yes
 If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? ☒ No ☐ Yes
 If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) ☐ A. Arise from the same or closely related transactions, happenings, or events; or
☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or
☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named plaintiff resides.
☐ Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles	

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named defendant resides.
☐ Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	Colorado State

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH claim arose.
 Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles	

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties
 Note: In land condemnation cases, use the location of the tract of land involved.

X. SIGNATURE OF ATTORNEY (OR PRO PER):  Date July 15, 2011

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935ff(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended, plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))